



FAIRFAX COUNTY  
PUBLIC SCHOOLS

## AMENDMENT

### Department of Financial Services

Office of Procurement Services  
8115 Gatehouse Road, Suite 4400  
Falls Church, Virginia 22042-1203

**JUN 07 2013**

#### AMENDMENT NO. 8

CONTRACT TITLE: Learning Content Management System and Related Support and Service

CONTRACTOR

Blackboard, Inc.  
650 Massachusetts Avenue  
Washington, D.C. 20001-3796

SUPPLIER ID

1000011844

CONTRACT NO.

4400001675

By mutual agreement, Contract 4400001675 is amended to incorporate the attached Blackboard Order Form that provides the three-year pricing for MOBILE LEARN K2NA CUSTOM (up to 70,000 users), as follows:

Year One - \$60,000.00;  
Year Two - \$63,000.00; and  
Year Three - \$66,150.00.

The annual cost of MOBILE LEARN K2NA CUSTOM includes all annual fees, product service and support. Year One will be invoiced separately, while Years Two and Three will be included on Blackboard's standard invoice.

All other pricing, terms and conditions remain the same.

  
Roger L. Ball  
Director

RLB/jrw

DISTRIBUTION:

FCPS – Information Technology – Jean Welsh  
FCPS – Information Technology – Allison Calderon  
FCPS – Procurement Services – Contract file  
Contractor

*Ball*  
6/7/13



### Blackboard

This Blackboard Order Form ("Order Form") by and between Blackboard (as defined below) and Fairfax County Public Schools ("Customer") details the terms of Customer's use of the products and services set forth below ("Product and Pricing Summary"). This Order Form shall become effective on the Effective Date. This Order Form, together with the Blackboard Master Terms dated July 1, 2011 and incorporated by this reference, form the entire agreement between the parties in respect of the products and services set forth in the Product and Pricing Summary. Notwithstanding anything to the contrary in any purchase order or other document provided by Customer, any product or service provided by Blackboard to Customer in connection with a purchase order related to this Order Form is conditioned upon Customer's acceptance of this Order Form and the Blackboard Master Agreement. Any additional, conflicting or different terms proffered by Customer in a purchase order or otherwise shall be deemed null and void. Each of the individuals executing this Order Form represent and warrant that he or she is authorized to execute the Agreement on behalf of Customer or Blackboard, as applicable.

In consideration of the promises set forth herein, and other good and valuable consideration, the receipt of which are hereby acknowledged, the parties hereby agree as follows:

#### A. Product and Pricing Summary

Qty	U of M	Product Code	Product or Service Description	Year One (7/1/13- 6/30/14)	Year Two (7/1/14- 6/30/15)	Year Three (7/1/15- 6/30/16)
1	YR	MOB-LRN-K2NA99	MOBILE LEARN K2NA CUSTOM (up to 70,000 users)	\$ 60,000	\$ 63,000	\$ 66,150

#### B. Term


1. **Initial Term:** Unless otherwise specified in the Product or Service Description above, the Initial Term shall be three (3) years following the Effective Date.
2. Unless otherwise specified in the Product or Service Description above, this Order Form shall be renewed automatically for successive periods of one (1) year (each a "Renewal Term") after the expiration of the Initial Term and any subsequent Renewal Term, unless Customer provides Blackboard, or Blackboard provides Customer, with a written notice to the contrary thirty (30) days prior to the end of the Initial Term or Renewal Term, as applicable.
3. **Effective Date:** July 1, 2013

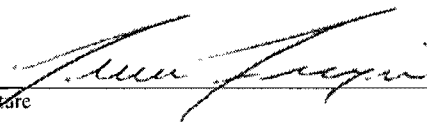
#### C. Payment Terms

1. All initial and subsequent payments shall be due Net 30. Unless otherwise specified, all dollars (\$) are United States currency.
2. Customer shall be invoiced for amounts due in respect of the first year of the Initial Term upon execution of this Order Form.
3. **Sales Tax:** If applicable, a copy of your Sales Tax Direct Pay Certificate or your Sales Tax Exemption Certificate must be returned with this Order Form.

#### D. Special Provisions

1. The terms and conditions set forth at <http://agreements.blackboard.com/bbinc/licenseschedule.aspx> are hereby incorporated.
2. The parties agree that pursuant to this Order Form, any use of Customer's icons or screenshots under section 8.4 of the License Schedule above, shall only be with the express written consent by Customer.

Customer: Fairfax County Public Schools

Signature
Ron Shoram
Name (printed)
Coordinator
Title (printed)
6/7/13
Date

Blackboard ("Blackboard")

Signature
TESS FRAZIER
Name (printed)
VICE PRESIDENT
Title (printed)
Date June 5, 2013

## BLACKBOARD SOFTWARE LICENSE SCHEDULE

THIS BLACKBOARD SOFTWARE LICENSE SCHEDULE ("SCHEDULE") IS A "SCHEDULE" PURSUANT TO THE MASTER TERMS ("AGREEMENT") BETWEEN CUSTOMER AND BLACKBOARD (AS DEFINED IN THE ORDER FORM) AND DESCRIBES THE GENERAL TERMS BY WHICH CUSTOMER MAY LICENSE SOFTWARE AND PURCHASE SOFTWARE MAINTENANCE AS IDENTIFIED IN THE ORDER FORM. CAPITALIZED TERMS USED IN THIS SCHEDULE. CAPITALIZED TERMS THAT ARE NOT OTHERWISE DEFINED IN THIS SCHEDULE SHALL HAVE THE MEANING SET FORTH ELSEWHERE IN THE AGREEMENT.

### 1. ADDITIONAL DEFINITIONS

1.1 "**Application Pack**" means the object code software utility release(s) that are designed to work with the Software that may be, in Blackboard's sole discretion, issued in between Updates, designated by AP#, and/or later incorporated into Updates or Upgrades.

1.2 "**Blackboard Materials**" means the Blackboard training materials, course materials, instructor's manuals, product documentation and all other instructional materials specified on the Order Form and delivered to Customer pursuant to Section 3 below. For purposes of this Schedule, unless otherwise expressly stated in the applicable Order Form, the Version of the Blackboard Materials referred to herein shall be deemed to be the latest Version made generally available by Blackboard as of the date on which delivery of such Blackboard Materials is made by Blackboard pursuant to Section 3 below.

1.3 "**Central Service**" means the Bb Mobile Team's internal API used to power Mobile Central across all platforms (iPhone, BlackBerry, Android, Mobile Web, and any additional Blackboard authorized platforms).

1.4 "**Corrections**" means a change (e.g. fixes, workarounds and other modifications) made by or for Blackboard which corrects Software Errors in the Software, provided in temporary form such as a patch, and later issued in the permanent form of an Update.

1.5 "**Customer Data**" means all data provided by Customer or its end users through the Blackboard Mobile Service.

1.6 "**Customer Systems**" means any system Customer uses to house data for the Blackboard Mobile Central Application.

1.7 "**Designated Server Site**" means the physical location where the Software will be installed, as identified in the Order Form.

1.8 "**FTE**" or "**Full Time Equivalent**" is defined as the number of full-time students plus half of the part-time students. To the extent that Customer desires non traditional students, including without limitation, faculty, staff, alumni, continuing education students or participants in community outreach or non-degree bearing courses to utilize the Blackboard Software, the total number of such other users shall be communicated to Blackboard to be priced separately when the combined numbers of such other users exceeds ten percent (10%) of the total FTE number reported by Customer. FTE may be further described in the Order Form, and such definition in the Order Form shall control in the event of a conflict with this Schedule.

1.9 "**ICM Services**" means integration and customization services selected and purchased by Customer and provided to Customer by Blackboard as part of an optional annual maintenance program for the Downloadable Solution, and includes integration of the Software with Customer's other licensed Blackboard products, and support related to planned minor releases from Blackboard such as application packs, service packs and hotfixes, as well as updates and upgrades. ICM Services shall not include support or technical assistance required as a result of changes to Customer's system architecture, or from changes to Customer's external environment such as the installation of third party authentication or other tools.

1.10 "**Version**" means the release of Blackboard Materials made generally available by Blackboard that is marketed as a separate product or module and is identified by a number that differs from the prior release in the number to the left of the decimal point (e.g., 3.0 vs. 2.0).

1.11 "**Software Error**" means a failure of any Software materially and substantially to conform to applicable Documentation, provided that such failure can be reproduced and verified by Blackboard using the most recent Version (including all available Corrections, Application Packs, Updates, and Upgrades) of such Software made available to Customer, and further provided that Software Errors do not include any nonconformity to applicable Documentation caused by: (i) Customer's or its end users' negligence, (ii) any modification or alteration to the Software not made by Blackboard, (iii) data that does not conform to Blackboard's specified data format, (iv) operator error, (v) use on any system other than the operating system specified in the Documentation, (vi) accident, misuse or any other cause which, in Blackboard's reasonable determination, is not inherent in the Software, or (vii) any use of the Software other than expressly authorized in this Schedule.

**1.12**      **“Supported Interface”** means application-based interfaces (API) provided pursuant to the *Blackboard Building Blocks®* program, to the extent the program is available, network protocols, data formats, database schemas, and file formats available for use in the Software as expressly specified in the Documentation.

**1.13**      **“Third Party Software”** means software or content manufactured or created by a third party that has been incorporated by Blackboard into the Software.

**1.14**      **“Updates”** means the object code versions of the Software that have been developed by Blackboard to correct any Software Error and/or provide additional functionality and that have been commercially released with a version number that differs from that of the prior version in the number to the right of the decimal point (e.g., 2.0 vs. 2.1) and that are not marketed as a separate product or solution, including Application Packs.

**1.15**      **“Upgrades”** means the object code versions of the Software that have been customized, enhanced, or otherwise modified by or on behalf of Blackboard, acting in its sole discretion, to include additional functionality and that have been released with a version number that differs from that of the prior version in the number to the left of the decimal point (e.g., 3.0 vs. 2.0) and that are not marketed as a separate product or solution.

## **2. GRANT OF LICENSE**

Subject to the terms and conditions of the Agreement, Blackboard grants Customer a limited, non-exclusive, non-transferable non-sublicenseable right and license to install and use one (1) production copy and one unsupported Test Copy of the Software for one installation at Customer’s Designated Server Site (unless Customer purchases the Blackboard Managed Hosting Non-Production Test Environment in which case Blackboard will host the Test Copy of the Software) as described in the Order Form, solely in the form of machine-readable, executable, object code or bytecode, as applicable, and solely in connection with providing access to Customer Content to Customer’s Authorized End Users (unless otherwise expressly stated in the special provisions of the Order Form) and to use the Documentation provided, however, that such Test Copy may be used to the extent required for and for the sole purposes of application clustering and/or load balancing, (i) on a group of production servers, with each server acting as a managed node within such group so that, effectively, the application is deployed on a single logical system host comprised of multiple managed node servers, or (ii) on multiple managed nodes that are configured and deployed on a single physical host that manages the self contained nodes. Customer shall not (i) copy or duplicate any Software or Documentation, provided that, notwithstanding the foregoing, Customer shall be permitted to create one (1) copy of the Software for archival, non-productive purposes provided that Customer reproduces on the copy all copyright notices and any other confidential or proprietary legends that are on or encoded in the Software; (ii) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any Software is compiled or interpreted, and Customer hereby acknowledges that nothing in this Agreement shall be construed to grant Customer any right to obtain or use such source code; or (iii) install or use any Software on any computer, network, system or equipment other than the Designated Server Site, except with the prior written consent of Blackboard. Customer shall not provide access to the Software to anyone other than Authorized End Users without Blackboard’s prior written consent. Should Customer choose to terminate a multi-year Agreement in advance of the Initial Term or Renewal Term, Customer will be required to pay a penalty fee to Blackboard equal to the difference of the total discount received for the Term of the product or products being terminated

## **3. DELIVERY**

Unless otherwise agreed by the Parties, as soon as commercially practicable after the Schedule Effective Date, Blackboard will make available a copy of the Software for downloading from the Internet by Customer for purposes of installation by Customer, and delivery of the Software shall be deemed complete when Blackboard notifies Customer that the Software is available for download. Customer acknowledges that the download site will be made available to Customer for a period not longer than thirty (30) days from the date of such notice, and Customer will have no right to download the Software after this thirty (30) day period.

## **4. AUDIT**

For the sole purpose of ensuring compliance with this Agreement, Blackboard shall have the right, at its expense, to audit Customer’s use of the Software upon not less than seven (7) days’ advance notice. Any such audit shall be during Customer’s normal business hours and shall not be made more frequently than once every twelve months, provided that if any such audit reveals a material breach of this Agreement, Blackboard may conduct such audits on a quarterly basis until such audits confirm that the relevant breach has been cured. The cost of any such audit shall be borne by Blackboard unless the audit reveals that Customer has underpaid fees due under this Agreement in excess of 5% of the total owed for any calendar year, in which case Customer shall, in addition, reimburse to Blackboard the reasonable costs of conducting the audit.

## **5. LIMITED WARRANTY**

Blackboard warrants, solely for the benefit of Customer, that any Software licensed under this Schedule which is manufactured by Blackboard will substantially conform to the applicable Documentation for a period of ninety (90) days after the initial Available Date. The warranty set forth in this Section shall only be valid if: (i) Blackboard has received all amounts owed under this Agreement, (ii) Customer is not in material breach of this Agreement, (iii) Customer has installed any Corrections, Upgrades and Updates made available to Customer, and (iv) Customer has notified Blackboard in writing of any failure of the Software to conform to the foregoing warranty within the warranty period. BLACKBOARD'S SOLE OBLIGATION, AND CUSTOMER'S SOLE REMEDY, WITH RESPECT TO ANY BREACH OF THE FOREGOING WARRANTY, IS REPAIR OR REPLACEMENT (AT BLACKBOARD'S OPTION) OF THE RELEVANT SOFTWARE IN A TIMELY MANNER.

## **6. SUPPORT AND MAINTENANCE**

Customer is eligible to receive Product Support from Blackboard as described in the Blackboard Client Support Services Guide located on Blackboard's website at <http://library.blackboard.com/docs/support/supportsvcguid.pdf>, which Blackboard reserves the right to modify, from time to time, effective five (5) days after such modified document is posted at the relevant link, such posting to constitute effective notice of changes.

## **7. FERPA**

In the event that Customer provides Blackboard access, in the course of providing any services under this Agreement, to non-public end user educational information covered under the Family Education Rights and Privacy Act of 1974 ("FERPA"), Blackboard shall maintain the confidentiality of such information in accordance with the provisions of FERPA but in no event shall Blackboard have any responsibility for breaches caused by the acts or omissions of Customer or Customer's users relating to such information.

## **8. BLACKBOARD MOBILE SERVICE**

**8.1 Distribution of User Software.** Subject to the terms and conditions of this Agreement, Blackboard grants Customer a limited, non-exclusive, non-transferable right during the Term to distribute any applications provided by Blackboard for use on mobile devices ("User Software"). Promotion and distribution of the User Software is the responsibility of Customer. Distribution of the User Software by Customer to its end users shall be pursuant to a license agreement which is reasonably satisfactory to Blackboard; provided, however, that the standard distribution terms utilized by Apple Inc. to distribute applications through its Apple App Store shall be deemed satisfactory unless Blackboard otherwise notifies Customer in writing. Additionally, if Customer has selected the Personal Pay Customer's End Users will pay the fees set forth in the Order Form for Blackboard Mobile products and services, except for those fees which are designated in such Order Form to be paid by Customer.

**8.2 Customers Obligations.** Customer is responsible for promptly providing and maintaining Customer Data feeds to the Central Service for each of the licensed modules (the modules contained within Customer's Blackboard Mobile Central application) which Customer has selected for the User Software in formats which are compatible with the Central Service. Customer is responsible for maintaining Customer Applications, Customer Systems and Customer Data and promoting and distributing Customer applications which are not licensed by Blackboard to Customer, Updates and Upgrades to end users via Customer's distribution channels such as Customer's Apple application Store page. Customer will designate a qualified individual to serve as Customer's support contact with Blackboard for maintenance and support issues, requests and inquiries ("Site Administrator"). Customer may change its Site Administrator at any time by providing written notice to Blackboard. Customer and its End Users will be solely responsible for acquiring and maintaining all telecommunications and Internet services and other hardware and software required to access and use each Blackboard Mobile Service, including, without limitation, any and all costs, fees, expenses and taxes of any kind related to the foregoing.

**8.3 Third Party Software/Content.** The Blackboard Mobile Services may contain Third Party Software. In order to distribute any User Software for a given mobile platform, Customer is required to enroll in the appropriate Developer Program for that platform, such as the Apple Developer Program or any successor program; such program enrollment is between Customer and the proprietor of such Developer Program directly.

**8.4 Certain Rights.** Blackboard shall have the right to use Customer's icon and screenshots from Customer's Blackboard Mobile Services to demonstrate the technology to other customers and prospective customers and in Blackboard's promotional materials, provided that Blackboard agrees to discontinue such use within fourteen (14) days of Customer's written request. Blackboard shall have a royalty-free, worldwide, perpetual license to use or incorporate into Blackboard's products or services any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer or Customer's users. The User Software will be marked "Powered by Blackboard" or similar designation and Customer shall maintain such designation on Customer's webpage that promotes the Service to Customer's users.

**8.5      Product Support.** Customer is eligible to receive Product Support from Blackboard as described from time to time in the Blackboard Customer Support Services Guide located on Blackboard's website at <http://library.blackboard.com/docs/support/mobiledu/> or any successor website, which Blackboard reserves the right to modify, from time to time, effective five (5) days after such modified document is posted at the relevant link, such posting to constitute effective notice of changes.

**8.6      Application Development Kit.** Customers that license Blackboard Mobile Central may at its option utilize the Blackboard Mobile Software Development Kit under the terms located on Blackboard's website at <http://library.blackboard.com/docs/support/mobiledu/> or any successor website.